IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.493 OF 2006

Hyderabad (Sind) National Collegiate
Board through Shri J.K.Bhambhani,
Rector & Secretary and ors. ..Petitioners

Versus

Mansura Ebrahim Milwalla and ors. ..Respondents

Mr.J.P.Cama, Sr. Counsel with Vivek Talreja i/b Gobindram D.Talreja & Associates for petitioners

Mr.Y.E.Mooman for respondent no.1
Ms Vaishali Kamble for respondent no.2

CORAM : P.V.KAKADE, J.

DATE : 3RD FEBRUARY, 2006.

P.C.:

1. Heard the learned counsel for all the parties. Perused the record.

2. Rule, rule made returnable forthwith by consent.

3. The Petition is preferred against the order passed by Presiding Officer, Mumbai University and College Tribunal dated 16.12.2005 rejecting the application of the

petitioners to produce the additional documentary evidence on record in the course of the enquiry held against the respondent no.1.

4. It appears from the record that the appeal is filed by the respondent No.1 under Section 59 (1) of the Maharashtra Universities Act, 1994 challenging the order of her removal from service. Admittedly the respondent no.1 was working as a Librarian in the College of the Petitioners and the Management had initiated a disciplinary enquiry against her on the charge of having committed misconduct. The charge was based on the alleged facts that the respondent had neither passed B.A. (Spl.) decree examination nor the LL.B. examination and that she had submitted fake certificate to the management and fraudulently obtained employment. There were six charges framed under Rule 41(3), 42(a), 42(c), 42(m), 42(n) and 42(4) of the Standard Code accusing her of having failed to maintain absolute integrity and devotion to duty, committed theft, fraud or dishonesty, falsification or tampering of record, committing acts involving moral turpitude and obtaining employment in the College by misrepresentation of the facts were proved against the respondent no.1 and accepting report of the Enquiry

Officer, that the management removed the respondent no.1 from service by its order dated 30.8.2005, which was the subject matter in the said appeal

. The petitioners made an application for production of documents listing in all 51 documents basically in order to show the past conduct of the delinquent. The application was opposed on behalf of the delinquent and the learned Presiding Officer on hearing both the parties thought it fit to reject the application on various grounds, hence the present Petition.

5. At the outset, it must be noted that we are concerned only with the order of rejection of application for production of documents. The learned Presiding Officer appears to have taken view that no reason was given as to why the production of the said documents had become necessary for the petitioners. It was further held that question involved in the appeal was whether the findings arrived at by the Enquiry Officer, on the basis of the evidence adduced before him, was proper and correct and whether the impugned order of removal from service would be sustained and therefore, it was held that the documents sought to be produced for have no relevance on

the issues involved in the appeal. It was further held that no explanation was forthcoming as to what prevented the petitioners-respondents from producing the said documents during the course of enquiry itself. Further it was held that allowing the production of the said documents would amount to leading of additional evidence against the delinquent in the appeal on the facts which were not subject matter of the charges framed against her and on these grounds the application came to be rejected.

6. In this regard I must note that it is needless to mention that any disciplinary enquiry is held in two parts in the sense that first part consists of the evidence pertaining to the charges framed against the delinquent and findings recorded against the delinquent are on the basis of evidence led by both the parties in that regard. Second part thereafter comes in the enquiry when it is found that the delinquent is guilty of the charges, and thus the question of punishment. In this case it is apparent from the record that at the time of imposing the punishment on the delinquent the order passed by the disciplinary authority shows that the delinquent was informed that the charges were duly proved against her which were grave and serious in nature warranting her

dismissal from service. However, looking into her past record and length of service, the management decided to take lenient view and impose the major penalty of removal from service as contemplated by Rule 43 of the said Rules. Therefore, the question of past record was involved when the question of passing of order of penalty and quantum thereof was to be considered.

7. Now the documents which are sought to be produced on record are pertaining to the past conduct of the delinquent and therefore, it was urged on behalf of the petitioners that the documents were very much relevant in order to support the quantum of punishment imposed upon the delinquent in the course of the enquiry. In my considered view, this argument is acceptable especially when the first part of the enquiry was conducted, there was no question of any involvement of issue of past conduct of the delinquent, which is also the fact endorsed to by the Presiding Officer when he observed in para 4 of his order that the question involved in the appeal is whether the findings arrived at by the Enquiry Officer on the basis of the evidence adduced before him are proper and correct and whether the impugned order of removal of service can be sustained. Therefore, in my considered

view, while considering the issue of correctness of punishment it would be necessary for the concerned authority to look into the past record on which the petitioners have relied upon while imposing the punishment. The learned Presiding Officer has also taken view that there is no explanation as to what prevented the petitioners-respondents from producing the said documents during the course of enquiry. However, as noted above, the question of production of these documents definitely came at the later stage and there was no necessity, nor propriety in producing those documents regarding the past conduct of the delinquent in the course of the enquiry which was confined to the charges framed against her and it was ultimately held to be proved on the basis of available evidence. The presiding officer appears to be of the view that production of the said documents would amount to leading of additional evidence against the appellant in this appeal, which were not subject matter of the charges framed against her. Bearing the repetition, I must note here that the documents produced on record are not part of the evidence in respect of the charges framed against her but were pertaining to the punishment to be imposed on the delinquent at the relevant time.

8. The learned counsel for the petitioner sought to put reliance on the ruling of the Himachal Pradesh High Court in the case of **Balwant Kumar and anr vs. Kailash Behl and anr. reported in AIR 2003 HIMACHAL PRADESH 48,** which has rightly held that if after producing and proving the copy of mutation on record, the court finds that it could not be produced in rebuttal, it is at liberty to reject that document on that ground, but the court cannot refuse permission to produce and prove it on record. Similarly in the present case if the learned Presiding Officer were to be of the view that the documents are not relevant after allowing the production, he was at liberty to reject the documents. However, in my considered view, it was not proper to shortcut the process of evidence by rejecting the production of the documents at the threshold. This is especially so when the same Presiding Officer in the same enquiry allowed the delinquent to produce the documents which were not part of the enquiry proceeding. My attention was invited to the list of the documents produced by the delinquent in the appeal and I am informed that the documents at Sr.No.17 onwards were produced for the first time after the findings were recorded in the course of the enquiry in rebuttal of the charges. In this regard, I do not wish to make any

comment, however, it must be noted that rule and procedure should be applicable fairly to both the parties involved.

9. So far as permission to produce the documents at the appellate stage is concerned, the judgments of this court in the case of **Prahladrai Dalmia Lions College of Commerce & Economics Bombay & Ors. vs. A.M.Rangaparia and Ors. reported in 1988(3) Bom. C.R. 564** should be sufficient to show that the Presiding Officer was required to consider the production of additional evidence which were very much relevant for the purpose of effective adjudication of the entire dispute especially the issue of quantum of punishment if he came to the conclusion that the enquiry was held properly and legally. The ruling of the this Court reads thus -

> Merely because in section 42-C the legislature has termed College Tribunal as an Appellate Court it cannot be strictly construed to man that it has no powers to record evidence. The nomenclature would not be a decisive factor in determining the jurisdiction and the powers of the Tribunal. It has used the expression Tribunal equivalent to an Appellate Court because there is always an order

of Management which is sought to be challenged before the College Tribunal and therefore, it is that sense "An Appellate Court". The College Tribunal is also given power to go into the question of legality and correctness of the impugned order including to decide as to whether the order is illegal or improper. The Tribunal is also empowered to set aside the order of Management partially or wholly and issue directions to the Management accordingly. The words ‘illegal and improper’ used in sub-section 42-D are indicative of the fact that the College Tribunal can also find out as to whether the impugned order is illegal or improper. The phrase, ‘impropriety’ covers a larger area which includes non-observance of the principles of natural justice. The Tribunal is also empowered to direct the Management to reinstate the employee on the same and or lower post as it may specify. It may also direct the Management to restore the employee to the rank which he held before reduction or to any lower rank as it may specify. The Tribunal can also direct to give arrears of emoluments to the employee. The Tribunal can also

> impose a lesser punishment in lieu of dismissal, removal etc. The Tribunal can also empowered to direct that in case if it is decided not to reinstate the employee or in any other appropriate case, to give such sum to the employee, by way of compensation but not exceeding his emoluments for six months section 42-D if considered in its proper perspective leaves no manner of doubt that College Tribunal has got jurisdiction to try all issues and to adjudicate upon the dispute between the Management and the employee including power to record evidence. Therefore, if it was found necessary that some important factual aspects were involved which might necessitate the recording of evidence."

10. In view of these aspects, I have no doubt whatsoever that the learned Presiding Officer has taken wrong view of the matter and therefore, the order passed on the application for production of documents requires to be reviewed and has to be set aside. Accordingly, Rule is made absolute. The petition is allowed in terms of prayer clauses (a) and (b) and stands disposed of with no order as to costs. Certified copy expedited.

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